

CHAPTER 29

HEALTH AND ENVIRONMENT

HOUSE BILL 19-1070

BY REPRESENTATIVE(S) Arndt, Hooton, McKean, Buentello, Cutter, Galindo, Hansen, Herod, McLachlan, Michaelson Jenet, Pelton, Snyder, Titone, Wilson;
also SENATOR(S) Tate, Moreno, Zenzinger, Priola, Scott.

AN ACT

CONCERNING THE REPEAL OF STATUTORY PROVISIONS REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO TEST SUBSTANCES THAT ARE PURPORTED TO HAVE VALUE IN THE TREATMENT OF CANCER.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly declares that the purpose of this act is to repeal obsolete statutory provisions relating to the Colorado department of public health and environment. The general assembly further declares that repealing these statutory provisions does not alter the scope or applicability of the remaining statutes.

SECTION 2. In Colorado Revised Statutes, **repeal** article 50 of title 25 as follows:

ARTICLE 50
Cancer Cure Control

25-50-101. Definitions. ~~As used in this article 50, unless the context otherwise requires:~~

(1) ~~"Cancer" means all malignant neoplasms regardless of the tissue of origin including malignant lymphoma and leukemia.~~

(2) ~~"Department" means the department of public health and environment.~~

(3) ~~"Licensed dentist" means a person licensed to practice dentistry under article 35 of title 12 by the Colorado dental board or its successor.~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~(4) "Licensed physician or osteopath" means a person licensed to practice medicine under article 36 of title 12 by the Colorado medical board or its successor.~~

25-50-102. Application of article. ~~The provisions of this article 50 shall not be construed in any manner to authorize any licensed physician, osteopath, or dentist to practice medicine or dentistry beyond the limits imposed by the applicable statutes of the state.~~

25-50-103. Powers and duties of department. ~~(1) The department shall:~~

~~(a) Prescribe reasonable rules with respect to the administration of this article 50;~~

~~(b) Investigate violations of the provisions of this article 50 and report the violations to the appropriate enforcement authority;~~

~~(c) Secure the investigation and testing of the content, method of preparation, efficacy, or use of drugs, medicines, compounds, or devices, held out by any individual, person, firm, association, or other entity in the state as of value in the diagnosis, treatment, or cure of cancer, prescribe reasonable regulations with respect to the investigation and testing, and make findings of fact and recommendations upon completion of any investigation and testing;~~

~~(d) Hold hearings in respect to the investigations made under the provisions of subsection (1)(c) of this section, and subpoena witnesses and documents. Prior to issuance of a cease-and-desist order under section 25-50-107, a hearing shall be held by the department. The person furnishing a sample under section 25-50-104 shall be given due notice of the hearing and an opportunity to be heard.~~

~~(e) Contract with independent scientific consultants for specialized services and advice.~~

25-50-104. Investigation by department. ~~On written request by the department, delivered personally or by mail, any individual, person, firm, association, or other entity that holds out either expressly or impliedly any drug, medicine, compound, or device as being of a value in the diagnosis, treatment, alleviation, or cure of cancer, shall furnish the department with a sample as the department may deem necessary for adequate testing of the drug, medicine, compound, or device and shall specify the formula of any drug or compound and name all ingredients by their common or usual names, and, upon like request by the department, shall furnish further necessary information as it may request as to the composition and method of preparation of and the manner in which the drug, compound, or device is of value in diagnosis, treatment, alleviation, or cure of cancer.~~

25-50-105. Failure to comply with request of department. ~~(1) If there is failure to either provide the sample, disclose the formula, or name the ingredients as required by this article 50, it shall be conclusively presumed that the drug, medicine, compound, or device that is the subject of the department's request has no value in the diagnosis, treatment, alleviation, or cure of cancer.~~

~~(2) Any individual, person, firm, association, or other entity that fails to comply~~

with any of the provisions of this article 50, or with any order of the department validly issued under this article 50, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-505.

25-50-106. Unlawful acts. (1) ~~It is a misdemeanor for an individual, person, firm, association, or other entity, other than a licensed physician, licensed advanced practice nurse within his or her scope of practice, licensed osteopath, or licensed dentist to diagnose, treat, or prescribe for the treatment of cancer or to hold himself or herself out to any person as being able to cure, diagnose, treat, or prescribe for the treatment of the disease of cancer. A licensed chiropractor shall not treat cancer or prescribe for the treatment of cancer. A chiropractor may treat any person for human ailments within the scope of his or her license even though the person has or may have cancer at the time, but if a chiropractor knows or has reason to believe that any patient has or may have cancer, he or she must refer the patient to a medical doctor or an osteopath.~~

(2) ~~It is a misdemeanor for any individual, person, firm, association, or other entity willfully and falsely to represent a device, substance, or treatment as being of a value in the treatment, alleviation, or cure of cancer. Nothing in this section shall abridge the existent rights of the press. Any person who is convicted of a third or any subsequent violation of this article 50 commits a class 6 felony and shall be punished as provided in section 18-1.3-401.~~

25-50-107. Findings - cease-and-desist order. (1) ~~Following an investigation or testing of the content or composition of any drug, medicine, compound, or device held out either expressly or impliedly by any individual, person, firm, association, or other entity to be of value in the diagnosis, treatment, alleviation, or cure of cancer and after a hearing as provided in section 25-50-103, the department may direct that any such individual, person, firm, association, or other entity shall cease and desist any further holding out, either expressly or impliedly, that any such drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, is of value in the diagnosis or treatment of cancer.~~

(2) ~~In the investigation or testing required by this article 50 to determine the value or lack of value of any drug, medicine, compound, or device in the diagnosis, treatment, or cure of cancer, the department, as it deems necessary or advisable, shall utilize the facilities and findings of its own laboratories or other appropriate laboratories, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute within this state or the facilities and findings of the federal government or of the national cancer institute. The department may arrange, by contract, for investigation by and submission to it of findings, conclusions, or opinions of trained scientists in the appropriate departments of universities, medical schools, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute and the submission to it of findings, conclusions, or opinions of other qualified scientists. Prior to the issuance of a cease-and-desist order under this section, the department shall make a written finding of fact based on the investigation that the drug, medicine, compound, or device so investigated has been found to be either definitely harmful or of no value in the diagnosis, treatment, alleviation, or cure of cancer, and the department shall be satisfied beyond a reasonable doubt that the written findings of fact are true.~~

25-50-108. Injunction. (1) If an individual, person, firm, association, or other entity, after service upon him, her, or it of a cease-and-desist order issued by the department under section 25-50-107, persists in prescribing, recommending, or using the drug, medicine, compound, or device described in the cease-and-desist order, or a substantially similar drug, medicine, compound, or device, the district court in any county, on application of the department and when satisfied by a preponderance of the evidence that the written findings of fact required of the department by section 25-50-107 are true, may issue an order to show cause why there should not be issued an injunction or other appropriate order restraining the individual, person, firm, association, or other entity from holding out either expressly or impliedly the drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, as being of a value in the treatment, diagnosis, alleviation, or cure of cancer. After a hearing on the order to show cause, an injunction or other appropriate restraining order may be issued.

(2) Any person against whom an injunction has been issued, under subsection (1) of this section, may not undertake to use in the diagnosis, treatment, or cure of cancer any new, experimental, untested, or secret drug, medicine, compound, or device without first submitting it to the department for investigation and testing.

25-50-109. Investigation by executive director. (1) The executive director shall investigate possible violations of this article 50 and report violations to the appropriate enforcement authority.

(2) County or district health officers, district attorneys, and the attorney general shall cooperate with the executive director in the enforcement of this article 50.

25-50-110. Reports of investigation. The department, in accordance with the provisions of section 24-1-136, may publish reports based on its investigation or testing of any drug, medicine, compound, or device prescribed, recommended, or used by any individual, person, firm, association, or other entity; and, when the use of any drug, medicine, compound, or device constitutes an imminent danger to health or a gross deception of the public, the department may take appropriate steps to publicize the same.

25-50-111. Investigation not an endorsement. The investigation or testing of any product shall not be deemed to imply or indicate any endorsement of the qualifications or value of the product. No person shall make any representation that investigation or testing under this article 50 constitutes any approval or endorsement of his, her, or its activities by the department. The investigation or testing of any product shall not be deemed to imply or indicate that the product is useless or harmful, and during testing no person shall make any representation, except to the department, that the product under test is discredited or that it has been found useless or harmful.

25-50-112. Exceptions. (1) This article 50 shall not apply to the use of any drug, medicine, compound, or device intended solely for legitimate and bona fide investigational purposes by experts qualified by scientific training and experience to investigate the safety and therapeutic value thereof unless the department finds that the drug, medicine, compound, or device is being used in diagnosis or treatment for compensation and profit.

~~(2) The provisions of this article 50 shall not apply to any person who depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization, nor practitioner thereof.~~

~~(3) The provisions of this article 50 shall except any drug that is being clinically investigated as a cure, treatment, or aid to the diagnosis of cancer according to the regulations of the "Federal Food, Drug, and Cosmetic Act".~~

~~(4) (a) (I) The provisions of this article 50 shall not apply to the compound known as laetrile when manufactured in Colorado and prescribed by a licensed physician after fully disclosing to his or her patient the known adverse effects and reactions and the known reliability or unreliability in cancer treatment of the compound.~~

~~(II) In prescribing the use of laetrile, the licensed physician shall do so only upon a request by the patient.~~

~~(III) In complying with a patient's request concerning the use of laetrile, a licensed physician, pharmacist, hospital, or health care facility shall be immune from any civil or criminal liability for prescribing or administering laetrile as provided for in this subsection (4), but nothing in this subsection (4)(a)(III) shall preclude any cause of action brought by a patient against a licensed physician, pharmacist, hospital, or health care facility that does not arise from the prescription or administration of laetrile in accordance with the provisions of this subsection (4).~~

~~(b) It is the intent of the general assembly that the exception granted by this subsection (4) does not constitute an endorsement of the use of laetrile nor does it in any way encourage its use.~~

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 11, 2019